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April 18, 2013

Hon. Mike Blackburn
Office of Inspector General
Florida Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399

Re: K12 Inc. Response to OIG Investigative Report in Case Number 2013-0003

Dear Inspector General Blackburn,

Thank you for this opportunity to comment on behalf of K12 Inc. on the findings of the investigation arising from the allegations made by Diane Lewis of Seminole County Public Schools ("SCPS"), referred to hereafter as the "allegations." See § 20.055(6)(e), *Florida Statutes* (2012). In this response we will address each section of the OIG Report.

Allegation 1 - Intentional Use of Non-Certified Teachers

Allegation 1, advanced over a year ago, involved sweeping and conclusory accusations that K12 was utilizing a "teacher of record" system to intentionally avoid the teacher certification requirements of Florida law, and attempting to cover up those intentional violations with false reporting.

After a year-long investigation in which the OIG's office reviewed hundreds of thousands of documents produced voluntarily by K12, interviewed scores of K12 instructors and administrators and examined countless historic and recorded courses maintained in the K12 online and computer backup systems, the investigation did not find a single instance in which a Seminole course was taught by a K12 instructor not fully and legally certified to teach in Florida. The OIG Report confirms the findings of K12's own internal investigation. It is troubling that SCPS officials engaged the OIG before raising these serious allegations directly with its vendor, which could have likely avoided or minimized this costly investigative process and the unjustifiable damage it has caused to K12.

Allegation 2 - Record-Keeping Systems Can Be Improved

As to Allegation 2, the Report concluded, as K12 has acknowledged, that certain record-keeping systems and staff training should be improved to ensure that teacher, student and

course records are more accurately collected and retained. K12 agrees with these OIG findings and the associated recommendations. In fact, as detailed below, K12 has already implemented several systems and training improvements since the 2010-2011 school year, many of which were put in place before K12 had any knowledge of the Seminole allegations made against it.

Allegation 3 - Out of Field Instruction

In late 2012, nearly a year after SCPS submitted its original allegations, and as the OIG's investigation was nearing its end with no finding of non-certified teaching by K12, Seminole abruptly raised an entirely new allegation. This time, SCPS claimed that in years past some of K12's teachers were responsible for subjects which were outside the assigned teachers' areas of certification. As the OIG Report makes clear, under Florida law, it is not a per se violation for teachers to teach out-of-field. *See* Testimony of Carolyn Hevey OIG Report at 18. According to Ms. Hevey, when such teachers complete certain certification requirements within a three-year period, out-of-field instruction is permissible and carries no penalty. Ms. Hevey admits that Seminole itself had some 100 teachers teaching out-of-field in the 2011-2012 year alone.¹

Again after exhaustive review the OIG found that, of 519 individual courses provided, there were 16 instances where the survey reports indicated a teacher had been assigned to a student in a course out of that teacher's areas of certification and no countervailing direct evidence could be produced which showed that an in-area teacher was actually responsible for the instruction of that student. Of the 46 instances in which Seminole alleged out-of-area teaching, K12 was able to demonstrate by direct proof that in 30 of the 46 alleged courses there were no instances of out-of-field teaching. Again, K12 relied on records which Seminole would have had full access to had it chosen to address any of these concerns directly with K12.

It is important to note that in every instance where direct student-teacher interaction was documented, that interaction was with an in-area certified teacher. The Allegation 3 finding

¹ On December 19, 2012, we submitted a public records request to Seminole seeking, among other things, all records identifying out-of-field instructors in Seminole for the years in question. After repeated requests for the information, Seminole finally produced its records on April 2, 2013, nearly three and a half months after our request. When the records finally came, they were missing large segments of the requested documents, and a follow-up records request for the additional information is pending. We were told the delay and deficiencies resulted from the fact the reconstructing records for the last three years (the same period involved in Seminole's allegations against K12), was a massive undertaking. This underscores the problem in rendering findings based on an entity's inability to produce records affirmatively proving its innocence. Although Ms. Hevey testified Seminole had 100 instructors teaching out-of-field in 2011-2012, it submitted out-of-field reports to us listing only eleven (11) out-of-field instructors in the 2011-2012 school year. Based on K12's independent cross-check of the certifications and courses taught by Seminole instructors, it appears that the actual number of out-of-field instructors was more than double the 100 Ms. Hevey acknowledged in her OIG testimony and that over the last three years Seminole substantially underreported the true number of out-of-field instructors in its reports on out-of-field instruction to DOE.

is based, in the words of the Report, on “insufficient data to establish that K12 teachers held the appropriate certification for the subject they were teaching.” In other words, there also was no evidence showing that out-of-area teaching was actually occurring, which is more consistent with the documentation, and evidences no intent or reason to avoid this requirement. While K12 accepts this third finding based on the lack of evidence showing otherwise, it does not agree with the OIG’s analytical approach. While K12 was able to affirmatively prove compliance in the vast majority of cases, the OIG has based its findings on the fact that in a handful of cases, K12 was not able to unearth records, two years after the fact, to *affirmatively disprove* or otherwise categorically refute Seminole’s claim that K12 teachers were teaching out-of-field.²

As a final general point, K12 remains perplexed as to why Seminole did not first raise these issues with K12, its vendor, before requesting an OIG investigation that has been costly for Florida and for K12. The records relied on to disprove the most serious accusations that are referred to as “Allegation 1,” and to affirmatively refute the brunt of the claims in Allegation 3, would have been readily available to Seminole long before they presented these accusations to the Inspector General.

Specific Items

With those general observations in mind, K12 would like to address some specific items in the Report, and then provide comments on each of the recommendations. Taking items in the order in which they appear in the Report, K12 would like to provide some comment and context on the following:

- At page 7, Diane Lewis states that Samantha Gilormini “had been with the K12 Virtual School Program for several years.” That is not accurate. At the time in question, Ms. Gilormini was new to the Florida program, which in part explains the fact that her emails did not accurately reflect the policies or practices of the program.

² Of course it is a fundamental tenet of the American justice system that the accused is presumed to be innocent of any and all allegations unless the accuser can affirmatively prove wrongdoing. The concept is expressed in the maxim “The proof lies upon him who affirms, not upon him who denies.” *Black’s Law Dictionary* 516 (6th ed. 1990). The notion that the accuser bears the burden to affirmatively prove its accusations is “an ancient and honored aspect” of our entire justice system. See *Victor v. Nebraska*, 511 U.S. 1, 5 (1994); *Coffin v. United States*, 156 U.S. 432 (1895). Despite this principle, the Department has placed on K12 the burden of affirmatively *disproving* the allegations, and has found K12 culpable, even though there was no proof to establish that any teachers were teaching out-of-field. In effect, K12 has been told, “we suspect that some years ago you had teachers teaching out-of-field and unless you prove to us that you didn’t, we will conclude that you did.” As the Report puts it, the Department affirmatively finds that the allegations are “substantiated” because there is “insufficient data to establish that properly certified teachers were used by K12.” OIG Report at 17. This approach turns on its head the time-honored rule placing the burden of proof on the accuser.

- The Report states at Page 9 that “Capelle further commented that ‘she did not know what K12’s model was with using a homeroom teacher and an assigned subject specific teacher for students.’ However, the written records demonstrate otherwise. On several occasions Amy Capelle provided information to her students regarding attending live direct instruction sessions conducted by subject specific teachers and information about how to find links to the recorded sessions if a student missed the live session.
- In her interview with the IG’s office, K12 employee Laura Creach suggested K12 used non-certified teachers while reporting that the classes were taught by other so-called “teachers-of-record.” (IG Report at 10-11). To support this allegation she referenced a survey report she was asked in an email to sign which listed her as teaching a course in Seminole she never taught. The OIG Report records her statement that she refused to sign the survey report and notified her supervisors of the issue. The Report continues, “In Creach’s words, she **received no answers** and was subsequently demoted. She said that *eventually* another K12 administrator, Allison Cleveland, responded during a meeting to correct the issues and new teachers were assigned.” (IG Report p. 11).

Based on the documents produced in this investigation, including a contemporaneous recording of a telephone conversation involving Ms. Creach on this issue, a very different picture emerges in which K12 employees are shown to be insistent on compliance. Due to a mistake by an administrator, class rosters were sent on October 28, 2009 to Ms. Creach and a handful of other teachers for their signatures. On Thursday October 29, 2009 at 7:44 pm, Ms. Creach wrote to her supervisor, Julie Frein, and advised her of the problem, stating “I thought you said Florida couldn’t use teacher of record?” The very next morning, on Friday October 30, 2009 at 11:07, Supervisor Frein responded to Ms. Creach, stating, “*I have passed on your question to our folks in Florida to clarify. For now, let’s just have the teachers sit tight until we receive clarification. I believe it should be the actual teachers in the courses, but I will verify. Thanks, Julie.*” In a conference call with Ms. Creach on Tuesday morning November 3, 2009, her supervisors, Julie Frein and Allison Cleveland, explained that the request for Ms. Creach’s signature on the survey report was sent in error and that “[n]o teacher should fill out anything that isn’t correct because teacher of record is not allowed in Florida and so they actually shouldn’t fill out those forms. And on the resubmit it’ll all be, all of the corrected teachers will be listed.”

For Ms. Creach to testify that “*eventually* a K12 administrator responded during a meeting,” when in fact K12 addressed it the next morning and resolved it roughly two business days after the concern was raised, is to leave the impression K12 did not timely deal with the matter, was engaged in some cover up, or was somehow unethical. Far from providing “*no answers*” and an “*eventual*” response, however, K12 promptly addressed the issue and clearly instructed Ms. Creach “not to fill out anything that isn’t correct because teacher of record is not allowed in Florida.”

Moreover, the statements of the K12 supervisors in the November 3, 2009 conference call show that the request for signatures resulted from nothing more than a clerical mistake and that none of the teachers to whom the email was sent in error actually signed and submitted the Reports.³

Finally, Ms. Creach's employment records do not show her to have ever been demoted. To the contrary, not long after these events Ms. Creach received a position in K12's iAcademy which she had long sought.

- The OIG Report states at Page 18 that K12 teacher Ms. Morris is not certified to teach M/J Life Science, M/J Earth/Space Science, and M/J Physical Science. According to K12's review, Ms. Morris' certification included M/J Science, and under the official course coding in place at that time, Ms. Morris' certification does properly include those courses.
- At Page 18, Carolyn Hevey is quoted as saying that, "K12 entered all of their student and teacher information into the School Administrative Information (SASI) database." That is not accurate. K12 did not enter data into SASI on behalf of Seminole. Seminole entered its own data into SASI.

³ Fortunately a recording exists of the November 3, 2009 conference call. Because a non-supervisor participant made the recording without advising the other participants, the supervisors made the following statements without knowing they were being recorded.

Julie Frein - Laura, we just wanted to go through your list of questions that you have so that we can make sure to talk you through all this so that you feel like you have the answers to your questions and then if you have any other questions you're free to bring those up, as well.... Patty is the head of the virtual schools in Florida... I sent her all of our teachers who had Florida certifications and also sent her all the ones who had submitted their applications and had certificates of eligibility numbers. Patty then misunderstood, or there was a disconnect between what I sent her, and what she understood. ***She thought all of the teachers that I was sending her were the ones in the classrooms***, and there wasn't that double-checking there. She has been in contact with the Seminole department and so they are all very aware of what's going on.

Allison Cleveland - Well I think the important part about Florida is this...you're *not* actually teaching in Florida. You have not had any contact with students in Florida. ***I mean your name being on that list was nothing but a mistake... The Florida situation, it was just a mistake. It was nothing more than Patty taking that list and assuming that all of those teachers were, for one, that the eligibility certification numbers were the actual certification numbers and they weren't.*** But two, things like Karen Bingham *is* a Florida certified teacher for Spanish. True she is, ***but Patty misunderstood that to mean that she was actually teaching those lists.*** She didn't take it to be a list of all of your possible options that you could use if you needed to. So on those all we can say is it hasn't been reported to the state yet. ***No teacher should fill out anything that isn't correct because teacher of record is not allowed in Florida and so they actually shouldn't fill out those forms. And on the resubmit it'll all be, all of the corrected teachers will be listed.***

Response To Conclusion Three

As stated above, it is important to note that the third conclusion regarding out-of-area teaching is not based on direct records of instruction, but rather on a mismatch in one of the survey reports between the teacher's certification and course listed. In all instances where recordings of instruction or other student-teacher interactions exist, that evidence shows an in-area teacher responsible for the instruction.

In any event, because as to 16 courses (of the 519 taught) there was insufficient direct evidence to refute the allegations of out-of-field instruction, the OIG concluded that the allegations were substantiated in those instances. Given this finding, K12 believes it is appropriate to provide SCPS with a recoupment of the state funds received in connection with those 16 courses. For Seminole County, the VIP contract provided funding at \$4800 per student for six courses each semester, which amounts to \$800 per course. Eight hundred dollars (\$800.) multiplied by 16 for those courses that could not be verified equals \$12,800 in student funding that K12 is recouping back to the Seminole County School District.

K12 is under contract with SCPS for the operation of its Virtual Instruction Program, and under that contract SCPS is currently in arrears, outside the payment of the terms of the contract, by \$203,997.50. In response to the third conclusion, K12 has written down this arrears amount of SCPS by \$12,800 and so notified SCPS.

Response To Recommendations

As to the four specific recommendations made to K12 on pages 21 and 22 of the Report, K12 provides the below responses:

Recommendation 1: As an internal control measure, K12 should require VIP instructors to sign class rolls.

K12 Response: K12 agrees with this recommendation, noting however that efficient and standardized electronic procedures should be established to accomplish this goal.

Recommendation 2: K12 should improve procedures for recording and retaining instructor, student and course records.

K12 Response: During the 2010-11 school year the K12 systems would only allow for one general education teacher to be assigned per student for grades k-8. This often caused problems for schools that had subject certification requirements within the middle school grades. K12 has worked hard to address this issue and continues to improve its student data management system. Currently the K12 system allows for each course within a student "file" to be assigned a separate teacher along with a general education teacher to be designated as the homeroom teacher in addition to the subject area teacher. This change in the K12 system allows for more consistent reports from the K12 system into the state reporting database. Schools will no

longer have to manually track subject area teachers independently of what can be tracked within the K12 systems.

Recommendation 3: K12's Reports should distinguish between the homeroom students and the specialized subject area students for the each teacher.

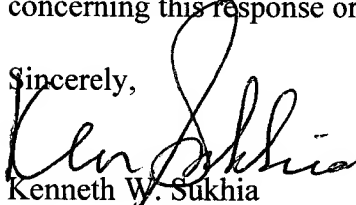
K12 Response: K12 has already implemented system changes, effective for the 2011-2012 school year that accomplish this. See above explanation.

Recommendation 4: The models employed by K12 in Florida must be consistent with these principles and must be communicated from management to all instructional staff.

K12 Response: K12 is committed to employing a model that is fully consistent with all Florida statutory and regulatory requirements for virtual instruction in the State. We believe our instructional model is fully compliant with all such statutes, rules and regulations. We will take all reasonable steps to ensure that all of our staff and teachers are trained and educated to properly implement that model, such as, teacher and staff training sessions, new teacher and staff orientation and staff and teacher professional development throughout the year.

On behalf of K12, I thank you and your office for the professional manner in which you conducted this investigation. K12 remains committed to fully cooperating with the Department to identify and resolve any concerns. If you have any additional questions concerning this response or any other matters, please do not hesitate to contact us.

Sincerely,



Kenneth W. Sukhia